

CENTER FOR DISABILITY ACCESS
Ray Ballister, Jr., Esq., SBN 111282
Mark Potter, Esq., SBN 166317
Phyl Grace, Esq., SBN 171771
Dennis Price, SBN 279082
Mail: PO Box 262490
San Diego, CA 92196-2490
Delivery: 9845 Erma Road, Suite 300
San Diego, CA 92131
(858) 375-7385; (888) 422-5191 fax
phylg@potterhandy.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Shirley Lindsay,

Plaintiff,

v.

**Jones Management-La Tijera,
Inc.,** a California Corporation; and
Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act;
California Disabled Persons Act;
Negligence

Plaintiff Shirley Lindsay complains of Defendants Jones Management-La Tijera, Inc., a California Corporation; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. She suffers from arthritis (osteoarthritis of multiple joints; spinal stenosis of the lumbar spine; and essential hypertension) of her hands, knees, and hips. She uses both a cane and wheelchair for mobility.

2. Defendants are, or were at the time of the incidents, the real property

1 owners, business operators, lessors and/or lessees for McDonald's restaurant
2 ("Restaurant") located at or about 6904 La Tijera Blvd., Los Angeles,
3 California.

4 3. Plaintiff does not know the true names of Defendants, their business
5 capacities, their ownership connection to the property and business, or their
6 relative responsibilities in causing the access violations herein complained of,
7 and alleges a joint venture and common enterprise by all such Defendants.
8 Plaintiff is informed and believes that each of the Defendants herein,
9 including Does 1 through 10, inclusive, is responsible in some capacity for
10 the events herein alleged, or is a necessary party for obtaining appropriate
11 relief. Plaintiff will seek leave to amend when the true names, capacities,
12 connections, and responsibilities of the Defendants and Does 1 through 10,
13 inclusive, are ascertained.

14
15 **JURISDICTION & VENUE:**

16 4. This Court has subject matter jurisdiction over this action pursuant to
17 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
18 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

19 5. Pursuant to pendant jurisdiction, an attendant and related cause of
20 action, arising from the same nucleus of operative facts and arising out of the
21 same transactions, is also brought under California's Unruh Civil Rights Act,
22 and the California Disabled Persons Act, which acts expressly incorporate the
23 Americans with Disabilities Act.

24 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
25 founded on the fact that the real property which is the subject of this action is
26 located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

7. The Plaintiff went to the Restaurant in December of 2014 and January 2015 to dine with her family.

8. The Restaurant is a facility open to the public, a place of public accommodation, and a business establishment.

9. Parking spaces are one of the facilities, privileges and advantages offered by defendants to their customers at the Restaurant.

10. Unfortunately, there is an insufficient number of accessible parking spaces. There are approximately 54 parking spaces at the Restaurant but only two parking spaces are reserved for persons with disabilities. There should have been three parking spaces reserved for persons with disabilities.

11. Plaintiff alleges that there used to be more than two parking spaces in the lot reserved for persons with disabilities. Unfortunately, the accessible parking space has been allowed to get paved over or fade beyond recognition. Because of defendants' lack of maintenance and care, an additional parking space is no longer available for use by persons with disabilities.

12. Defendants have no policy or procedure in place to make sure that the accessible parking spaces remain useable in the parking lot. As such, the parking space reserved for persons with disabilities is no longer suitable for use by plaintiff.

13. In addition to not having enough parking, the parking stalls and access aisle for use by persons with disabilities are not level with each other because there is a built up curb ramp that runs into the access aisle and parking stalls. This results in slopes greater than 2.2%. Additionally, the parking spaces reserved for persons with disabilities also have cross slopes that are great than 2.2%.

14. The plaintiff personally encountered this problem. This inaccessible condition denied the plaintiff full and equal access and caused her difficulty

1 and frustration.

2 15. Plaintiff would like to return and patronize the Restaurant but will be
3 deterred from visiting until the defendants cure the violation. Plaintiff's
4 knowledge of the barriers prevents her from returning even though she would
5 like to visit, and has wanted to visit, the Restaurant. This Restaurant is
6 conveniently located for plaintiff. It is located about one block from her
7 residence.

8 16. The defendants have failed to maintain in working and useable
9 conditions those features required to provide ready access to persons with
10 disabilities.

11 17. Given the obvious and blatant violations, the plaintiff alleges, on
12 information and belief, that there are other violations and barriers on the site
13 that relate to his disability. Plaintiff will amend the complaint, to provide
14 proper notice regarding the scope of this lawsuit, once she conducts a site
15 inspection. However, please be on notice that the plaintiff seeks to have all
16 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
17 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,
18 he can sue to have all barriers that relate to his disability removed regardless
19 of whether he personally encountered them).

20 18. Additionally, on information and belief, the plaintiff alleges that the
21 failure to remove these barriers was intentional because: (1) these particular
22 barriers are intuitive and obvious; (2) the defendants exercised control and
23 dominion over the conditions at this location and, therefore, the lack of
24 accessible facilities was not an "accident" because had the defendants
25 intended any other configuration, they had the means and ability to make the
26 change.

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of plaintiffs and against all defendants (42 U.S.C. section 12101, et seq.)

19. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

20. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix "D."
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by

1 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

2 21. Any business that provides parking spaces must provide a sufficient
3 number of handicap parking spaces. 1991 Standards § 4.1.2(5). 2010
4 Standards § 208. According to the 1991 Standards, if a parking lot has 54
5 spaces, it must have 3 accessible parking spaces. 1991 Standards §
6 4.1.2(5)(a). Under the 2010 Standards, a parking lot with 54 spaces, must
7 have 3 accessible spaces. 2010 Standards § 208.2 and 1 of them must be van
8 accessible. *Id.* at 208.2.4.

9 22. Here, there were 54 parking spaces but there were just two accessible
10 parking spaces. This is a violation of the law.

11 23. Under the 1991 Standards, parking spaces and access aisles must be
12 level with surface slopes not exceeding 1:50 (2%) in all directions. 1991
13 Standards § 4.6.2. Here, the access aisle is not level and has a ramp taking up
14 part of the access aisle. Under the 2010 Standards, access aisles shall be at
15 the same level as the parking spaces they serve. Changes in level are not
16 permitted. 2010 Standards § 502.4. "Access aisle are required to be nearly
17 level in all directions to provide a surface for wheelchair transfer to and from
18 vehicles." 2010 Standards § 502.4 Advisory. Specifically, built up curb ramps
19 are not permitted to project into access aisles and parking spaces. *Id.* No more
20 than a 1:48 slope is permitted. 2010 Standards § 502.4. Here the failure to
21 provide level parking is a violation of the law.

22 24. A public accommodation must maintain in operable working condition
23 those features of its facilities and equipment that are required to be readily
24 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

25 25. Here, the failure to ensure that the accessible facilities were available
26 and ready to be used by the plaintiff is a violation of the law.

27 26. Given its location and options, the Restaurant is a business that the
28 plaintiff will continue to desire to patronize but she has been and will

1 continue to be discriminated against due to the lack of accessible facilities
2 and, therefore, seeks injunctive relief to remove the barriers.

3
4 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
5 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
6 51-53)

7 27. Plaintiff repleads and incorporates by reference, as if fully set forth
8 again herein, the allegations contained in all prior paragraphs of this
9 complaint.

10 28. Because the defendants violated the plaintiffs' rights under the ADA,
11 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
12 Code § 51(f), 52(a).)

13 29. Because the violation of the Unruh Civil Rights Act resulted in
14 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
15 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
16 55.56(a)-(c).)

17
18 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA**
19 **DISABLED PERSONS ACT** (On behalf of plaintiffs and against all
20 defendants) (Cal Civ. § 54-54.8)

21 30. Plaintiff repleads and incorporates by reference, as if fully set forth
22 again herein, the allegations contained in all prior paragraphs of this
23 complaint.

24 31. Because the defendants violated the plaintiff's rights under the ADA,
25 they also violated the Disabled Persons Act and are liable for damages. (Civ.
26 Code § 54.1(d), 54.3(a).)

27 32. Because the violation of the Disabled Persons Act resulted in difficulty,
28 discomfort or embarrassment for the plaintiffs, the defendants are also each

1 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
2 (c).)

3
4 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of plaintiff
5 and against all defendants)

6 33. Plaintiff repleads and incorporates by reference, as if fully set forth
7 again herein, the allegations contained in all prior paragraphs of this
8 complaint.

9 34. The Defendants had a general duty and a duty arising under the
10 Americans with Disabilities Act and the Unruh Civil Rights Act and
11 California Disabled Persons Act to provide safe, convenient, and accessible
12 facilities to the plaintiffs. Their breach of this duty, as alleged in the preceding
13 paragraphs, has caused injury and damage as alleged above.

14
15 **PRAYER:**

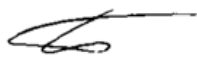
16 Wherefore, Plaintiff prays that this court award damages and provide
17 relief as follows:

18 1. For injunctive relief, compelling defendants to comply with the
19 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
20 Plaintiffs are not invoking section 55 of the California Civil Code and is not
21 seeking injunctive relief under the Disabled Persons Act at all.

22 2. Damages under the Unruh Civil Rights Act and/or the California
23 Disabled Persons Act which damages provide for actual damages and a
24 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both
25 acts, simultaneously, and an election will be made prior to or at trial.

1 3. Reasonable attorney fees, litigation expenses and costs of suit,
2 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

3
4 Dated: February 25, 2015 CENTER FOR DISABILITY ACCESS

5
6 By: 
7 Mark Potter, Esq.
8 Attorneys for Plaintiff
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28